Supreme Court, U.S.
FILED
APR 30 2002

No. 01-1275

In The

Supreme Court of the United States

CHARLIE HARRIS, ET AL.,

Petitioners,

v.

AKRON DEPARTMENT OF PUBLIC HEALTH, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITIONERS' REPLY BRIEF

CHARLIE & JACQUELINE HARRIS
1310 East Ave.
Akron, Ohio 44307
(330) 434-1027

JOHN HARRIS
1040 Cordova
Akron, Ohio 44320
(330) 253-6048

Pro Se Petitioners

PETITIONERS' REPLY BRIEF

The Petitioners will use the following example to show how unconstitutionally the ordinance is being implemented proving that it is unconstitutional. Petitioners were issued orders for 926 Yale Street on May 5, 1994, prior to the October 25, 1995 Orders. Sometime between May 1994, and September 1995 Mr. Groeger (the Housing Inspector) spoke with Harry Lamb who informed him that he owned the property. Mr. Groeger decided that Harry Lamb was the tenant and the Petitioners were the landlords.

A meeting was held in the office of Lunzy Armstrong and the Petitioners were told to evict Mr. Lamb and turn on the water or they would be prosecuted. At that time Harry Lamb was a squatter because he failed to make payments on a land contract, abandoned the property and then later broke in. The Petitioners were to give a copy of the eviction notice to a Mr. Irvin at the Health Department. This was after the Petitioners proved that the house had been abandoned without water for about three years and that Mr. Lamb broke in and proceeded to stake a claim. At that time the Petitioners requested that the property be razed. Mr. Groeger insisted that the house was not condemnable.

Consequently, the Petitioners ordered the water turned on, filed an eviction notice and hand delivered a copy to Mr. Irvin by October 26, 1995. The eviction hearing was scheduled but Harry Lamb retained Attorney James Brown to file a counter claim in the Common Pleas Court. At that time Respondents Steven Nome, Duane Groeger and Robert Remmel had full knowledge that Mr. Lamb filed a counter claim for possession of 926 Yale Street. That was Case No. CV 12 4318 assigned to the Honorable Judge Ted Schneiderman. The case was settled

and it was determined that Mr. Lamb would have Attorney James Brown draw a land contract, remove Diane Waggoner, a previous land contract holder, from the records and then file their land contact. The terms were that Harry Lamb would be fully and completely responsible for the property. He would pay $1,000.00 down and $100.00 per month until the agreed amount is paid off. Attorney Brown retained $25.00 of the $1000.00 down payment to remove Diane Waggoner from the records and file the Land Contract with Harry Lamb. This was all settled by May 31, 1996. For almost five years the Respondents, including Attorney Brown, communicated with Harry Lamb for he was indeed the owner occupant. (See attached exhibits 1-6)

Then, after Ordinance 769 was passed and the Petitioners were in Federal Court questioning its constitutionality, the Respondents sent the Petitioners notice on October 19, 1999. That notice was very threatening and it was concerning 926 Yale Street. The Petitioners were terrified and believed that the Respondents got with Harry Lamb and Attorney James Brown to give cause for harassing the Petitioners. Harry Lamb and Attorney James Brown were encouraged by the Respondents to deliberately not contact the Petitioners. It was only after that notice that the Petitioners filed a case, it was filed on October 26, 1999. (See attached exhibit 7) The attached notice is one of the major reasons why the Petitioners filed this case. The Respondents tried to instill in this Court and others that Petitioners filed a case in order to subvert the District Court but that is not true. The Petitioners were never informed of a hearing prior to their notice.

It had been established that the Respondents, after dealing with Harry Lamb, sent the Petitioners a threatening notice and that the Respondents' actions caused Petitioners to be in court back in 1995.

In the transcript of the April 26, 2001 hearing the Respondents were to notify the Petitioners when they were going to go into the property at 926 Yale Street and they did not do that. Magistrate Shoemaker instructed the Respondents to communicate with the Petitioners for a date when to have a hearing with Harry Lamb and Attorney Brown. That was also deliberately ignored. The date of June 21 or 22 was never communicated to the Petitioners in anyway by anyone. That Petitioners would have definitely had Harry Lamb sign the paperwork necessary to end this matter if they had known about the hearing. That entire hearing was illegal and only proves the Petitioners claims that the Respondents actions were to unjustly implement the ordinance on the Petitioners.

The Petitioners were then sent a notice from the Respondents that the property would be razed at the cost to the Petitioners. This forced the Petitioners to sign a waiver in ignorance. Back in October of 1995 and at the April 26, hearing the Petitioners requested that the property be razed. But that option was denied.

The hearing on June 21, or 22, 2001 was held and Harry Lamb and Attorney Brown validated almost everything the Petitioners attested to. Harry Lamb agreed ownership of the property. Despite all of this the Respondents informed Mr. Smylie at the Health Department to pursue the Petitioners with the implementation of the ordinance because the Housing Appeals Board ordered demolition. The Petitioners had an appeal before the Housing Appeals Board on March 26, 2001. That hearing was concerning the implementation of Ordinance 769 because

a demolition order was given for 926 Yale Street. That reverted right back to the Petitioners' initial complaint in the Common Pleas Court. Despite all of the evidence presented the Housing Appeals Board issued a rubber stamp denial.

The Petitioners have been gravely and illegally handicapped since they were never given discovery time. They were barred information concerning an elderly women and the elderly abuse of Harry Lamb towards his mother. They were barred from receiving any copies of any documentation proving search with a warrant, entry into the property and police reports. In fact it is due to a lack of discovery that the Petitioners are unable to file a Summary Judgment in this court. After all of the facts and how all the events transpired the Respondents continued to pursue the Petitioners. The Petitioners constitutional rights have been ignored even though the evidence was clear.

There have been many legal cases filed against the Akron Health Inspectors and the City of Akron.

The Common Pleas Court case involved the illegal actions on the part of the Respondents to cause the Petitioners undo harm while at the same time using a strong-arm to deliberately implement the ordinance. It is the actions of the Respondents that the Common Pleas Court case involved which lead to the undue implementation of the ordinance which the Petitioners are attempting to appeal in this Court.

The Housing Appeals Board granted the Akron Health Department to implement the mandatory inspections on the Petitioners for no other reason than because Harry Lamb and Attorney James Brown never did the paper work required to transfer title. The property was clearly not a rental or leased unit of the Petitioners. That

property was an owner occupied unit to which the ordinance does not apply. At present the Akron Health Department has already inspected over 12 of the units that the Petitioners own with a fee of $125.00 each for inspection. The total cost including fees, repairs, and other costs will exceed $35,000 per year. Most of the Units they have inspected are presently under the Akron Metropolitan Housing Authority Voucher Program and were just inspected and will have annual inspections. They have inspected a unit that was newly constructed less that two years ago and on the HUD Voucher Program. On the orders for that house they site repairs that simply do not exist. Even though the Petitioners have never been convicted of not complying with orders, they have properly registered all of their units, the Respondents are implementing the mandatory inspections on them for no other reason than because title had not been properly transferred. There was absolutely no safety, health and welfare issue involved. The property was demolished some months ago and demolition is listed as a remedy in the Ordinance. They did this while the Petitioners were in Court trying to settle the issue of ownership; Petitioners case has yet to be appealed.

All of the above clearly shows that the constitutionality of this ordinance must be reviewed by this Court.

Respectfully submitted,

CHARLIE & JACQUELINE HARRIS
1310 East Ave.
Akron, Ohio 44307
(330) 434-1027

JOHN HARRIS
1040 Cordova
Akron, Ohio 44320
(330) 253-6048

Petitioners Pro Se

PLAINTIFF'S EXHIBIT 1

[LOGO] **DEPARTMENT OF PUBLIC HEALTH**
MORLEY HEALTH CENTER/
177 South Broadway
Akron, OH 44308/(216) 375-2960

C. WILLIAM KECK, M.D., M.P.H./
DIRECTOR OF HEALTH

AKRON HEALTH COMMISSION
George E. Goldman, M.D., F.A.C.E.P.
President

Donald L. Plusquellic
Mayor

Posted 10-20-95
1:30 PM DEG

October 20, 1995

Harry Lamb
926 Yale Street
Akron, Ohio 44311

RE: 926 Yale Street

Section 150.21 of the Environmental Health Housing Code regarding the discontinuance of utilities reads as follows:

> "No owner, operator, or occupant shall cause any service, facility, equipment or utility which is required under this chapter to be removed from or shut off from or discontinued for any occupied dwelling let or occupied by him, except for such temporary interruption as may

be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is approved by the Housing Enforcement Officer."

It has been determined that the water service at the above address has been discontinued for reasons not compatible with the aforementioned section of the Housing Code. Therefore, by authority of Section 150.05 declaring an emergency, you are hereby ordered to restore the water service within 24 hours.

Whoever violates or fails to comply with any of the provisions of the Environmental Health Housing Code is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than sixty days, or both. Unless otherwise provided, a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

/s/ C. William Keck, M.D.

C. William Keck, M.D., M.P.H.
Director of Health

CWK/bas

* If you have any questions, please contact Sanitarian Duane Groeger at 375-2366.

PLAINTIFF'S EXHIBIT 2

October 21, 1995

Duane Groeger
Department of Public Health
177 South Broadway
Akron, Ohio 44308

RE: 926 Yale Street

Dear Mr. Groeger;

Enclosed you will find a copy from the water company proving the water at 926 Yale Street has been turned off for non payment ever since March of 1993. According to their records it has not been turned on since then. I do not understand how your records show that the water was turned off May of 1995 when it has not been turned on. The balance due is almost $200.00.

Mr. Lamb moved out of the property and broke into it to try to stake a claim that he owns property. He is not a tenant. And every time we have done any work to the property someone has come behind us and destroyed repairs. We even boarded the house up and Mr. Lamb has broken in and put stuff in it to say he lives there in order to hold us up.

You will also find copies of letters that Mr. Lamb's lawyer sent us regarding that property. Mr. Lamb was living in his mothers house on 80 West street. He was and still is a squatter and he is using the system to cost us tax payers undue stress and strain.

At this present time we make request that you board up the property at our cost.

Unfortunately we fear that is going to end up costing us more money. We do not qualify for volunteer legal services.

If Mr. Lamb's lawyer contacts us in writing that he will accept his responsibility to finally pay for something and meet with us to solve this problem I know all parties involved will be satisfied. We have yet to hear from Mr. Brown since our conversation with Mr. Lamb.

Thank you for your time.

Charlie Harris
Jacqueline Harris

PLAINTIFF'S EXHIBIT 3

FORCIBLE ENTRY & DETAINER FOR PERSONAL JUDGMENT

STATE OF OHIO)
COUNTY) ss.

IN THE MUNICIPAL COURT OF

_____

Jacqueline Harris	)	**Case No.**
1310 East Av. 44307	)	
Plaintiff	)	**Complaint**
	)	
vs.	)	
	)	
Harry Lamb	)	
926 Yale St.	)	
Defendant.	)	

FIRST CAUSE OF ACTION

1. Plaintiff___ for the first cause of action say's that the defendant has ever since the 20th day of October, 1995 unlawfully and forcibly detained from plaintiff___ possession of the following described premises, situated in the City of Akron, County of Summit, State of Ohio, and known as 926 Yale St.

_____

_____

together with the lot of land on which said House is located.

2. The said defendant___ entered upon said premises as tenant___ of the plaintiff_____, the lease thereof expired at the time herein first mentioned, and

from that time said defendant___ has unlawfully and forcibly held over said term.

3. On the 20th day of October, 1995 plaintiff___ duly served upon the defendant___, as required by law, notice in writing to leave said premises.

4. Plaintiff___ ask _____ process and restitution.

SECOND CAUSE OF ACTION

1. Plaintiff___ for _____ second cause of action say _____ that there is due _____ for the rent of said premises, from the defendant _____ the sum of _____ Dollars ($_____), which _____ claim _____ with interest at the rate of _____% per annum from the _____ day of _____ 19__

2. Plaintiff___ pray _____ judgment against said defendant _____

_____

for said sum of _____ Dollars ($_____), with interest thereon at the rate of _____% per annum from the _____ day of _____ 19__, and the costs herein incurred.

(216) 434-1027
/s/ Jacqueline Harris
Attorney___ for Plaintiff___

STATE OF OHIO)
COUNTY) ss.

_____being first duly sworn, deposes and says that _____ plaintiff _____ herein and that the facts and allegations contained in the foregoing conplaint are true as _____ verily believe.

_____

Sworn to before me and subscribed in my presence on this _____ day of _____, 19__

_____

_____

PLAINTIFF'S EXHIBIT 4

AKRON HEALTH DEPARTMENT
JOHN D. MORLEY HEALTH CENTER
177 SOUTH BROADWAY
375-2366

METHOD SERVED CERTIFIED MAIL
Program HAPPEN
OWN ____ RENT X OTHER [ILLEGIBLE]
OCCUPANTS ___
NUMBER OF UNITS ___
TYPE STRUCTURE KP

ORDERS SERVED TO:
OCCUPIED 926 YALE STREET 3/18
Occupant Address Telephone
CHARLES & JACQUELINE HARRIS
Owner/Agent/Person in Control
1310 EAST AVENUE 434-1027
Address Telephone
AKRON OH 44307
City State Zip

By authority of the Akron Environmental Health Housing Code, Chapter 150, your attention is directed below with orders and/or recommendations for corrections. SEE REVERSE SIDE FOR APPEALS PROCEDURE, INFORMATION REGARDING BUILDING PERMITS AND FIRE SAFETY.

1 – 150.10 –	Have interior stairway put in a good state of repair.
2 – 150.10 –	Provide/secure handrails where necessary.
3 – 150.08 –	Properly vent hot water tank.

4 – 150.08 –	Properly seal hot water tank flue pipe at chimney.
5 – 150.09 –	Properly seal furnace flue pipe at chimney.
6 – 150.10 –	Have heating facilities put in a good state of repair.
7 – 150.10 –	Provide rodentproof drain grate for cellar floor drain.
8 – 150.09 –	The wiring does not meet the regulations of Section 150.09 of the Akron Health Housing Code and must be corrected. All repairs must be done in accordance with the Akron Electrical Code with necessary permits. Consult a licensed electrical contractor to have the necessary work performed.
9 – 150.10 –	Repair walls and ceilings where necessary.
10 – 150.10 –	Recover worn flooring or satisfactorily repair where necessary.
11 – 150.10 –	Have existing plumbing fixtures and appurtenances put in a good state of repair.
12 – 150.09 –	Provide ventilation to bathroom and toilets.
13 – 150.21 –	Provide hot and cold running water to maintain sanitary facilities or vacate the premises. (Comply by October 26, 1995).
14 – 150.10 –	Repair/replace gutters and downspouts in an approved manner.

15 – 150.10 – Repair or replace porch floor(s), steps, rail and roof supports where necessary.

16 – 150.10 – Repair or replace siding and trim where necessary.

COMPLY WITH THE ABOVE ORDERS BY NOVEMBER 25, 1995, *UNLESS OTHERWISE NOTED.
REVISED FROM ORDERS PREVIOUSLY ISSUED MAY 5, 1994.

OCTOBER 25, 1995
DATE TIME

/s/ Duane Groeger
SANITARIAN

PLAINTIFF'S EXHIBIT 5

DATE: 5 31 96

CIVIL
TRANSFER/CONSOLIDATION/TERMINATION
APPROVAL FORM

CASE NUMBER: CV95-12-4318
CAPTION: Jacqueline Harris vs. Harry Lamb

I. TRANSFER

( ) T15A Transfer from Judge _____ to Judge _____

REASON FOR TRANSFER:
PLEASE CIRCLE APPROPRIATE REASON

REFILED CASE (previous case number: _____)
or RECUSAL

CONSOLIDATION

( ) CONS The above captioned case is being consolidated with case number CV _____.

(PLEASE ATTACH HISTORY CARD
WITH ALL TRANSFERS)

VOL 1968 PAGE 0773

Administrative Judge
/s/ Ted Schneiderman
Judge

_____
Judge

( ) REAC Reactivated
( ) REDS Redesignated
- ( ) A Professional Tort
- ( ) B Product Liability
- ( ) C Other Tort
- ( ) D Workers Compensation
- ( ) E Foreclosure
- ( ) F Administrative Appeal
- ( ) G Complex Litigation
- ( ) H Other Civil

II. TERMINATIONS

- ( ) t5 Jury Trial
- ( ) t6 Court Trial
- (✓) t7 Settled/Dismissed prior to trial
- ( ) t8 Dismissal
- ( ) t9 Dismissal for want of prosecution
- ( ) t10 Magistrate
- ( ) t11a Diversion by Arbitration
- ( ) t11b Diversion by Mediation
- ( ) t12 Default
- ( ) t14 Unavailability of party for trial
- ( ) t15b Transfer to another court
- ( ) t16 Referral to private judge
- ( ) t17 Bankruptcy stay or interlocutory appeal
- ( ) t18 Other Terminations

INITIALS:

[illegible] Responsible Court Personnel

_Clerk of Courts input

PLAINTIFF'S EXHIBIT 6

[LOGO] **AKRON HEALTH DEPARTMENT**
MORLEY HEALTH CENTER/
177 South Broadway
Akron, OH 44308/(330) 375-2960

ARRON HEALTH COMMISSION
George E. Goldman, M.D., F.A.C.E.P.
President

C. WILLIAM KECK, M.D.,/
DIRECTOR OF HEALTH

October 19, 1999

Charles and Jacqueline Harris
1310 East Avenue
Akron, Ohio 44307

RE: 926 Yale Street

Since you have elected not to appear at the prosecutor hearing on **October 19, 1999**, a final **10** day extension has been granted.

Whoever violates or fails to comply with any of the provisions of the Environmental Health Housing Code is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than sixty days, or both. Unless otherwise provided, a separate offense shall be deemed committed each day during or on which a violation occurs or continues. In addition to any criminal penalties whoever violates any provisions of this chapter shall be subject to administrative penalties of up to one thousand dollars ($1,000.00).

If you are not in full compliance within the time stated above, this matter may result in the City's initiating court proceedings or administrative penalties against you.

If you have any further questions regarding this matter, please contact **Jodie Forester** at 375-2366 between 7 a.m. and 9 a.m.

ENVIRONMENTAL HOUSING DIVISION

/s/ R. Remmel
R. Remmel
Special Projects Coordinator

RR/mlm